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## MEMORANDUM

**TO:** District Board of Zoning Adjustment

**FROM:** Paul Goldstein, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** November 6, 2012

**SUBJECT:** BZA No. 18440 - Request for area variance relief pursuant to § 202.2(c) to allow a third non-resident employee in an accessory dental practice in an R-3 zone.

### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) is **not able to make a recommendation** regarding the request for area variance relief from § 202.2(c) to accommodate three non-resident employees at an existing accessory dental practice at 641 G Street SW (Square 467, Lot 212). While OP is not opposed to the request in concept, OP has asked the Applicant to provide additional information to the record, including (but not limited to) the information below, in order to address the area variance standards:

- the exceptional conditions affecting the Property, such as the Applicant's historical practice of dentistry at the Property and the medical licensing requirements related to the Applicant's dentistry specialty;
- the harm to the Applicant's business should it strictly comply with the regulations; and
- the public good related to the Applicant's dental practice in the neighborhood.

The Zoning Administrator (ZA) originally referred the case as requiring special exception relief.<sup>1</sup> Following additional review and discussions between the ZA and OP, the ZA determined that area variance relief from § 202.2(c) is instead required.<sup>2</sup>

### **II. AREA AND SITE DESCRIPTION**

|                       |                                                                                                                                                                                                                                                                           |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Address:              | 641 G Street SW                                                                                                                                                                                                                                                           |
| Legal Description:    | Square 467, Lot 212 (hereinafter, the "Property")                                                                                                                                                                                                                         |
| Ward/ANC:             | 6/6D                                                                                                                                                                                                                                                                      |
| Lot Characteristics:  | The Property is rectangular in shape and approximately 20 feet wide and 70 feet deep for a total of 1,430 square feet in size. It has street frontage to the west (7 <sup>th</sup> Street) and south (G Street) and borders an approximately 6' wide walkway to the east. |
| Zoning:               | R-3: Row dwellings                                                                                                                                                                                                                                                        |
| Existing Development: | The Property is improved with a three-story row dwelling with a ground floor dental practice.                                                                                                                                                                             |
| Historic District:    | None                                                                                                                                                                                                                                                                      |

**BOARD OF ZONING ADJUSTMENT**  
District of Columbia

CASE NO. 18440

EXHIBIT NO. 23

<sup>1</sup> See Matt LeGrant's letter to Daniel Howard, dated May 25, 2012.

<sup>2</sup> OP has requested the ZA to submit a revised referral letter.



|                                     |                                                                                                                                                                                                                                                                          |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Adjacent Properties:                | The Property is adjacent to three-story row dwelling to the north. To the Property's east, across a walkway, is a three-story row dwelling.                                                                                                                              |
| Surrounding Neighborhood Character: | The subject Square is comprised mostly of row dwellings and some moderate scale multi-family buildings. More broadly, the area is a mix of row dwellings, apartment buildings, and institutional uses. The Property also is a block south of the elevated I-395 freeway. |

### III. PROJECT DESCRIPTION IN BRIEF

|                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant:     | Daniel Howard (the "Applicant")                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Proposal:      | The Applicant proposes to continue an existing dental practice with one dentist and three employees on the ground floor of the subject row dwelling. The Applicant indicates that his dental practice has operated with three employees at the subject location for decades. Currently, the practice operates with a home occupation permit, dated May 22, 2012, for a "dentist home office" with "two employees." The Applicant lives on the second and third floors as his primary residence. The dental practice runs on the ground floor and occupies approximately 800 square feet (or 30%) of the dwelling's ground floor. The Applicant's dental practice offers oral surgery which uses sedation anesthesia. For such a practice, the Applicant indicates that three employees are necessary in addition to the dentist: an anesthesia assistant, a surgery assistant, and a front desk person. |
| Relief Sought: | § 202.2(c): area variance to allow three non-resident employees in an accessory use                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

### IV. IMAGES AND MAPS



Aerial view of the subject site (highlighted in blue and identified with arrow)



View of the subject block looking northeast across 7<sup>th</sup> and G Streets (Property identified); Google Streetview (2009 image)

## V. RELIEF REQUESTED & OP ANALYSIS

The Applicant operates an accessory dental office in a residential district, which is a permitted use in the R-3 zone. The Applicant indicated to OP that the dental practice complies with the requirements of § 202.2(a), (b), and (d).<sup>3</sup> However, the Applicant requests that the practice have 3 non-resident employees rather than the two permitted under § 202.2(c), consequently requiring an area variance.<sup>4</sup>

OP notes that the application also could be reviewed as a “home occupation” pursuant to § 203.7(f), a path which has some overlapping requirements with § 202.2. However, it appears that the application also would require variance relief pursuant to § 203.10(c) to allow three employees and possibly other areas of relief would be needed as well.

### Area Variance Relief (§ 202.2(c))

- 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

The Applicant should provide additional information regarding the exceptional condition which imposes a practical difficulty. The Applicant could further describe the type of dental practice that historically has operated at the subject location and the operational/employment model for dental oral surgery. The application also references specific guidelines in the medical field which require three employees for such specialties. OP recommends that the Applicant provide a copy of the relevant guidelines to the record, as well as any relevant D.C. specific guidelines.

- 2. Does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?**

The Applicant should provide more information concerning the impact on his business if limited to two employees pursuant to § 202.2(c) rather than the desired three. OP surmises that such a limitation would have a deleterious impact on the Applicant’s business, particularly if practice guidelines recommend or require three employees. OP encourages the Applicant to address the associated burdens of compliance.

<sup>3</sup> The provisions of § 202.2 include: “(a) The physician or dentist shall reside on the premises; (b) No goods, chattel, wares, or merchandise shall be created commercially, exchanged, or sold in the office; ... and (d) Only one (1) sign not over one square foot (1 ft.<sup>2</sup>) in area and affixed to the dwelling or free-standing shall be used. The sign, if illuminated, shall be white and nonflashing.”

<sup>4</sup> OP consulted with OAG regarding whether an “area” or “use” variance would be required, and OAG advised that an area variance is appropriate.

**3. Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?**

While it is not anticipated that the request would have a substantial impact on the neighborhood, OP encourages the Applicant to further address the impact of permitting a third employee on the public good and the zoning regulations. For example, would allowing an additional employee (along with a dentist and two other employees) impose any extra burdens on neighbors? In addition, the Applicant could further discuss the community need for the subject dental specialty.

**VI. ANC/COMMUNITY COMMENTS**

The Applicant indicated that an ANC 6D representative intends to submit a supportive letter to the record. To date, OP has not received any submissions from ANC 6D or neighbors.